IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 445 OF 2006

1. Bharatkumar Sharma
2. Sushilkumar Sharma
3. Smt. Sushila Sushil Sharma ..Petitioners

versus

The State of Maharashtra ..Respondents

Mr. S. J. Patil for the Petitioners.
Mrs. S. D. Shinde APP for the Respondents - State.

CORAM : D. G. DESHPANDE, &
S. A. BOBDE,JJ.
DATE : 28TH JUNE, 2006

ORAL ORDER :

1. Heard learned Advocate for the Petitioners and the learned APP for the State. Rule, returnable forthwith, by consent.

2. Three petitioners have filed this petition for quashing C.R. No. I-71 of 2005 lodged at Badlapur Police Station. It is under Sections 376(2), 312, 34, 506 and 323 of IPC.

3. This petition for quashing the said CR is filed by the Petitioner Nos. 1 and 2 and also by Petitioner No.3 who has lodged FIR in that regard.

She appeared before us on 13.6.2006 and filed affidavit dated 6.3.2006. We verified that the affidavit was signed by her, she stated that she understands English and that she supports the contention of the affidavit and also stated that she has willingly married to the petitioner No.1, and, that no threat or coercion was exercised upon her in filing the said affidavit. She also stated that she she has no complaint against her husband and the FIR lodged against him be quashed..

4. Thereafter, the learned Advocate for the Petitioner relied upon a Judgment of the Supreme Court reported in **(2003)4 Supreme Court Cases 675 B. S. Joshi and others vs. State of Haryana and Anr.**, about inherent powers of the High Court under Section 482 of the Criminal Procedure Code read with Articles 226 and 227 of the Constitution of India to quash the Criminal proceedings. In that case Appellant No.4 was the husband, Respondent No. 2 was his wife and Appellant Nos. 1 to 3 were father, mother and younger brother of Appellant No.4. FIR came to be registered against husband and others under Section 498-A/323 and 406 IPC. She then filed affidavit to the effect that due to temperamental

differences, the FIR came to be registered. She further stated that the dispute has been finally settled and she and appellant No. 4 agreed for mutual divorce. The High Court however dismissed the petition of the appellant wherein prayer for quashing the FIR was made on the ground that offence under Sections 498-A and 406 IPC were not compoundable and the inherent powers of the High Court could not be invoked to bypass the mandatory provision or Section 320 of the Code. However, the Supreme Court in this judgment held that since Section 320 of the Code does not limit or affect the inherent powers of the High Court under Section 482 of the Code, quashing of criminal proceedings or FIR or complaint was permissible where non-compoundable offences were involved.

5. Relying upon this judgment, therefore, and relying upon the voluntary statement and affidavit of the petitioner No.3, we, quash C.R. No. I-71 of 2005 lodged at Badlapur Police Station, as prayed, in respect of the offences for which FIR is registered. Rule made absolute accordingly.

(D.G. DESHPANDE, J.)

(S.A. BOBDE, J.)